IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8955 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASWINBHAI JAYANTILAL SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8955 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

By this special civil application, the petitioner has challenged the detention in pursuance to the order passed against him by the Police Commissioner, Surat City

on 4.1.2003 in exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner is declared as "dangerous person" and was declared as engaging in activity disrupting the public order.

In the grounds served upon the petitioner placed on record denotes that four cases were registered against the petitioner under sec. 379 of the IPC for the theft of various things. Thereafter, the statements of the witnesses came to be recorded on 25.12.2002 wherein the witnesses referred incidents of 23.11.2002 and 4.11.2002 by which it is alleged that the petitioner disrupted the public order. The identity of the witnesses were kept concealed as per sec. 9(2) of the Act. After verifying the statements on 31.12.2002 on 4.1.2003 the order impugned came to be passed by the Police Commissioner, Surat City.

Ld. advocate Ms. Banna Datta for the petitioner and Ms. Panchal ld. AGP for the respondents were heard at length.

Amongst various grounds raised on behalf of the petitioner, this petition can be disposed of on the ground alone that the detaining authority failed to exercise the application of mind properly while passing the order of detention. This is with reference to a fact mentioned in the grounds that undoubtedly when the detention order came to be served upon the petitioner, he was under judicial custody for the offence registered against him, as aforesaid. Now, the detaining authority has reached to the subjective satisfaction that the petitioner was likely to be released on bail at any time and was likely to continue his anti social activities. Ld. AGP relied upon a decision of the Apex court in the matter of Abdul Sathar Ibrahim Manik vs. Union of India and ors., as reported in AIR 1991 SC 2261, wherein in similar circumstances in the matter of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the Apex Court observed that the detaining authority reached to the subjective satisfaction that there were compelling reason suggest that the detenu is likely to be released from the custody in near future and the nature of antecedents and the activities of the detenu which indicate that he was likely to involved in such activities, if released.

While in the case at hand, it is clear that there was no material before the detaining authority to reach

to the subjective satisfaction firstly that he was likely to be released on bail and secondly, that after release he was likely to continue his anti social activities and according to the above decision of the Apex Court, there should be compelling reason for reaching this subjective satisfaction. In the present case, there is no material on record by which detaining authority might have reached to a subjective satisfaction that there were compelling reason by which the detenu was likely to be released on bail and was likely to continue his anti social activities. The present case is more covered by the decision of Apex Court in the matter of Amritlal and other vs. Union Government through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675, wherein in clear terms the Supreme Court laid down that there must be some cogent material before the detaining authority to reach to a satisfaction that the petitioner was likely to be released on bail. No such material is referred or served upon the petitioner and, therefore, this is an application of non-application of mind on the part of the detaining authority in passing the order impugned. The order in question is required to be quashed and set aside on this ground alone. It has been contended on behalf of the petitioner that even no bail application has been preferred by the petitioner before the criminal court.

In this view of the matter, this special civil application is allowed. The order passed by Police Commissioner, Surat City on 4.1.2003 against the petitioner for detention under the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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